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SERVICE DATE – APRIL 11, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35106

UNITED STATES DEPARTMENT OF ENERGY—RAIL CONSTRUCTION AND
OPERATION—CALIENTE RAIL LINE IN LINCOLN, NYE, AND ESMERALDA
COUNTIES, NV

AGENCY: Surface Transportation Board.

ACTION: Notice of Construction and Operation Application and Adoption of Procedural Schedule.

SUMMARY: The Board is publishing notice of an application filed by the United States Department of Energy (DOE) seeking authority to construct and operate an approximately 300-mile rail line, to be known as the Caliente Line, connecting an existing Union Pacific Railroad Company line near Caliente, NV, to a proposed geologic repository at Yucca Mountain, Nye County, NV. The purpose of this proposed rail line is to allow DOE to transport spent nuclear fuel and high-level radioactive waste for disposal at the proposed geologic repository, as well as to provide common carrier rail service to communities situated along the proposed line.

The Board, on its own motion, is adopting a procedural schedule that calls for notices of intent to participate and establishes filing dates for submissions on whether this application meets the criteria of 49 U.S.C. 10901.

DATES: This notice is effective on April 16, 2008. Pleadings must be filed in accordance with the schedule set forth in the Appendix to this notice. All filings, except notices of intent to participate, must be concurrently served on all parties of record and must be accompanied by a certificate of service.

ADDRESSES: Any filing submitted in this proceeding must be submitted **either** via the Board's e-filing format **or** in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Director, Office of Civilian Radioactive Waste Management, United States Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585; (2) Director, Office of Logistics Management, United States Department of Energy, 1000 Independence Ave., S.W., Washington,

DC 20585; (3) Assistant General Counsel for Civilian Nuclear Programs, ATTN: Bradley L. Levine, GC-52, United States Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585; and (4) any other person designated as a party of record on the service list notice described below.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0395.
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: The Board's review of construction applications is governed by 49 U.S.C. 10901 and by the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370d (NEPA), and related environmental laws. Section 10901 requires the Board to grant a construction application unless the Board finds that the proposal is inconsistent with the public convenience and necessity. Under our regulations, comments on DOE's application are due 35 days after its March 17, 2008 filing date, and DOE's reply is due 5 days after the comments are due. See 49 CFR 1150.10(g) and (h). However, because the application is extensive, replies might be lengthy, and the proceeding might be controversial, we find that the standard timetable is not appropriate in this proceeding. Accordingly, to guide the submission of filings on the merits of the application, we will adopt a procedural schedule similar to the one used in a recent proceeding involving a voluminous and controversial construction application, Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment, STB Finance Docket No. 30186 (Sub-No. 3). The schedule for the DOE proceeding, which is set forth in the Appendix, will accord all parties due process because it provides ample time and opportunity for the submission of comments and replies. The schedule will also better enable the Board to determine whether the proposed construction meets the criteria of section 10901.

DOE has caused notices to be published stating that comments on the application are due on or before April 21, 2008, as ordinarily required by our rules. While interested parties may continue to file comments by April 21, 2008, the parties may also file comments pursuant to the longer time frames in the procedural schedule we establish here. To alert the parties of the new schedule, we will require DOE to cause this notice to be published in the same places as the prior notices and to certify to the Board that it has done so.

Any person who wishes to participate as a party of record in this proceeding by filing comments and by receiving other parties' pleadings must file with the Acting Secretary of the Board an original and 10 copies of a notice of intent to participate in accordance with the attached procedural schedule. In order to facilitate service of pleadings on parties of record, the Board will issue a list of those persons who have given notice of their intent to participate. However, an interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. The primary application and other filings in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Filings." Additionally, electronic copies of the application are available from DOE online at "www.ocrwm.doe.gov."

On April 2, 2008, the State of Nevada filed a motion asking the Board to reject the application, or in the alternative, to make replies to the application due after the applicant has supplemented the record. DOE's reply to this motion is due by April 22, 2008. We will address the State's motion and any reply in a later decision.¹ Our issuing this notice now does not constitute a determination as to whether DOE's application is complete or otherwise prejudice the State's motion. We will modify the schedule, if necessary, as a result of our subsequent ruling on the State's motion.

The environmental review related to the proposed construction and operation of a rail line to Yucca Mountain began in 2004 and is well underway. In 2004, the Board accepted DOE's invitation to participate as a "cooperating agency" under the President's Council on Environmental Quality regulations at 40 CFR 1501.6 to give DOE the benefit of the Board's expertise in freight rail transportation in the preparation of Environmental Impact Statements (EISs) addressing a potential Nevada rail transportation corridor and alternative rail alignments. DOE was also aware when it asked the Board to become a cooperating agency that the Board would have jurisdiction over the proposed new rail line in the event DOE were to decide to have the proposed line operated as a common carrier rail line. (The cooperating agency process is intended to make environmental review under NEPA more efficient by giving all agencies with licensing authority over a project the environmental information they need to comply with NEPA and related environmental laws in undertaking their decisionmaking.)

The Board's Section of Environmental Analysis (SEA) and the other cooperating agencies on the Nevada rail corridor and rail alignment EISs (the Bureau of Land Management and United States Air Force) have participated in every step of the EIS process. The Draft EISs were issued for public review and comment in October 2007 in Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada (DOE/EIS-03691) and in Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada—Nevada Rail Transportation Corridor (DOE/EIS-0250F-S2D). DOE has made electronic copies of the Draft EISs addressing the Nevada rail corridor and alternative rail alignments available at "www.ocrwm.doe.gov."

SEA participated in the public hearings that were held on the Draft EISs in November and December 2007. Following the close of the comment period in January 2008, preparation of Final EISs addressing the Nevada rail corridor and alternative rail alignments began. DOE estimates that it will issue the Final EISs in June 2008. The EISs (including the public comments) will serve as the basis for SEA's recommendations to the Board regarding whether, from an environmental perspective, DOE's construction and operation application should be granted, denied, or granted with environmental conditions.

The Board has not participated in the ongoing EIS process for the proposed geologic repository that the proposed new line would serve.

¹ On April 8, 2008, Nevada Central Railroad filed a notice stating that it intends to participate in this proceeding and that it also plans to file a motion to reject the application.

The Board will take into consideration both the transportation merits and the environmental impacts of constructing and operating the proposed line when ruling on DOE's application.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board decisions and notices are available on our website at "www.stb.dot.gov."

Decided: April 10, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Acting Secretary
Anne K. Quinlan

APPENDIX

PROCEDURAL SCHEDULE ON THE MERITS.

April 16, 2008	Publication of notice adopting procedural schedule.
April 28, 2008	Due date for certification by DOE that it has published newspaper notices announcing this procedural schedule.
May 7, 2008	Due date for notices of intent to participate as a party of record.
July 15, 2008	Due date for comments in support of or opposition to the application.
August 29, 2008	Due date for DOE's reply.